



Federal Lands Highway Program Federal Transit Programs Serving Federal and Indian Lands And Related programs Information

May 14, 2003

Contents

Federal Lands Highway Program Fact Sheet

Section 1804 Bill Text

Section 1804 Section-by-Section Analysis

Title 23 provisions after Section 1804 changes

Indian Reservation Rural Transit Program [49 U.S.C. 5311(h)]

National parks and public lands Legacy Project [49 U. S.C. 5316]

Tribal Transportation Provisions Fact Sheet

Planning Capacity Building Initiative Fact Sheet

National Scenic Byways Fact Sheet

Recreation Trails Program Fact Sheet

Transportation Enhancements Fact Sheet

FEDERAL LANDS HIGHWAYS PROGRAM

Year	2003 (TEA-21)	2004	2005	2006	2007	2008	2009
Park Road and Parkways	\$165 M	\$300 M	\$310 M	\$320 M	\$320 M	\$320 M	\$320 M
Indian Reservation Roads	\$275 M	\$333 M	\$333 M	\$333 M	\$333 M	\$333 M	\$333 M
Public Lands Highways Discretionary	\$83.6 M						
Forest Highways	\$162.4 M	\$200 M	\$200 M	\$200 M	\$200 M	\$200 M	\$200 M
Refuge Roads	\$20 M	\$30 M	\$30 M	\$30 M	\$30 M	\$30 M	\$30 M
Recreational Roads		\$50 M	\$50 M	\$50 M	\$50 M	\$50 M	\$50 M
Safety		\$40 M	\$40 M	\$40 M	\$40 M	\$40 M	\$40 M
Total	\$706 M	\$953 M	\$963 M	\$973 M	\$973 M	\$973 M	\$973 M

Program Purpose

The Federal Lands Highway Program (FLHP) provides funding for a coordinated program of public roads, bridges and transit facilities serving Federal and Indian lands.

SAFETEA Section(s): 1101(a)(9), 1102, 1501, 1604(d), **1804**, 3010(g), 3036(e), 3037

Statutory Citation (current law): 23 USC 202, 203 and 204

Program Structure

Adds the following new program categories:

- **Recreational Roads Program** -- provides funding for public roads that provide access to museums, lakes, reservoirs, visitors centers, gateways to major wilderness areas, public use areas, recreation and historic sites for which title is vested in the US Government.
- **Safety Program** -- provides funding to Federal Land Management agencies for transportation safety improvement projects, collection of safety information, transportation planning, bridge inspections, development and operation of safety management systems, highway safety education programs and other eligible activities under Chapter 4 of title 23, U.S.C.

Continues the **Forest Highway, Indian Reservation Roads, Park Road and Parkways, and Refuge Roads** programs.

Discontinues the **Public Lands Discretionary Program**.

Program Changes

Forest Highway Program -- No changes proposed to program procedures, project selection, use of funds or forest highway definition.

Federal Share Payable -- Expands the ability of Federal land managing agencies to pay the non-Federal share of any Federal-aid project funded under 23 U.S.C. 104 to all title 23 Federal-aid highway programs and the Federal transit program funded under Chapter 53 of title 49 by using their own appropriated funds or FLHP funds. [1804(b)]

Indian Reservation Roads (IRR) Program -- Revises the date on which the new IRR fund distribution formula regulation is published from April 1999 to April 2004, and the year in which the new formula is implemented from October 1999 to October 2004. Allows the use of IRR Bridge funds to be used for design as well as construction. Clarifies that an approved IRR Transportation Improvement Program is needed before entering into contracts or agreements under the Indian Self-Determination and Education Assistance Act. [1804(d)]

Recreational Roads Program -- Recreation roads under the jurisdiction of the Bureau of Land Management, Bureau of Reclamation, Department of Defense, Forest Service, and U.S. Army Corps of Engineers are now eligible for funding. Maintenance and improvement projects addressed in the land use management plan for the Federal area do not require any additional environmental reviews or assessments. [1804(g)]

Safety Program -- This program provides dedicated funds for transportation safety improvement projects, collection of safety information, development and operation of safety management systems, transportation planning, bridge inspection, highway safety education programs, and other eligible activities in Chapter 4 of title 23, U.S.C. Funding will be available to the Bureau of Reclamation, Bureau of Indian Affairs, Bureau of Land Management, Forest Service, Fish and Wildlife Service, Military Traffic Management Command, National Park Service and the U.S. Army Corps of Engineers. [1804(f)]

Refuge Roads -- Expand the use of refuge road funds to include interpretive signage, maintenance of public roads in National Fish hatcheries, payment of the non-Federal share of Federal-aid highway and transit projects, and maintenance and improvement of recreational trails. Funding used for trails would be limited to 5 percent of available funding per fiscal year. [1804(e)(3)]

Park Roads and Parkways -- No changes proposed to program procedures, project selection, use of funds and park road or parkways definitions. Program increases are in alignment with the President's goal to fix roads within National Parks.

Lake Tahoe (CA/NV) planning and projects -- No change to this part of the program. This provision is moved to Chapter 53 of title 49, U.S.C. [5303 and 1501]

Obligation Limitation

Continues TEA-21 provisions as follows:

- FLHP funds are subject to the overall Federal-aid obligation limitation each year.
- Program will receive obligational authority equal to the authorization level. [1102(c)(1)]
- Full obligation limitation is provided for future fiscal year carryover FLHP funds. [1102(c)(2)]

Definitions

- The definition for “forest development roads and trails” was changed to align with terms used by the U.S. Forest Service. [1804(a)]
- A definition for “Public Forest Service Road” was added. [1804(a)]
- A definition for “recreation roads” was added. [1804(a)]
- The new definition for “public lands highway” that was added by TEA-21 was changed to align with current Federal land terms. [1804(a)]
- The old definition for “public lands highways” was deleted. [1804(a)]
- The definition for “federal lands highway “ was changed. [1804(a)]

Funding Transfers

Allows direct transfers of apportioned funds to Federal agencies, including the Federal Lands Highways Program, upon State request. [1804(c)]

Transit *(note: for more detailed information, see FTA fact sheets)*

In addition to FHWA’s Federal Lands Highways program, transit funds are authorized for programs on federal lands as follows:

- Indian Reservation Rural Transit Program provides grants to Indian tribes to establish, operate and maintain rural transit programs on Indian reservations and other tribal lands. [3010(g)]
- National Park Legacy Project allows the Secretary to make grants to provide transit service to any Federally owned or managed park, refuge, or recreational area that is open to the general public. [3037]

Environment

Refuge roads are exempt from the 4f provision [1604(d)].

5/12/03

SAFETEA Bill Text

SEC. 1804. FEDERAL LANDS HIGHWAYS PROGRAM.

(a) DEFINITIONS.—Section 101(a) of title 23, United States Code, is amended—

(1) in paragraph (7), by striking “ public lands highway” and inserting “recreation roads, public Forest Service roads”;

(2) by striking paragraph (8) and inserting the following:

“(8) NATIONAL FOREST SYSTEM ROADS AND TRAILS.—The term 'National Forest System roads and trails' means forest roads or trails under the jurisdiction of the Forest Service.”;

(3) by striking paragraph (10) and inserting the following:

“(10) FOREST ROAD OR TRAIL.—The term 'forest road or trail' means a road or trail wholly or partly within, or adjacent to, and serving National Forest System lands that is necessary for the protection, administration, use, and development of its resources. There are four types of forest roads:

“(A) CLASSIFIED FOREST ROAD.--The term 'classified forest road' means a forest road that the Forest Service determines to be needed for long-term motor vehicle access, including State roads, county roads, privately owned roads, National Forest System roads, and other roads authorized by the Forest Service.

“(B) UNCLASSIFIED FOREST ROAD.--The term 'unclassified forest road' means a forest road not managed by the Forest Service as part of the forest transportation system.

“(C) TEMPORARY FOREST ROAD.--The term 'temporary forest road' means a forest road that is authorized by the Forest Service through contract, permit, lease, other written authorization, or emergency operation not intended to be a part of the forest transportation system and not necessary for long-term resource management.

“(D) PUBLIC FOREST SERVICE ROAD.--The term 'Public Forest Service Road' means a classified forest road that is open to public travel for which title and maintenance responsibility is vested in the United States government and which has been designated a public road by the Forest Service.”;

(4) in paragraph (26), as redesignated by this Act, by striking “unappropriated or unreserved”; and

(5) by striking paragraph (27), as redesignated by this Act, by redesignating paragraph (28) as (27), and by inserting the following new paragraph:

“(28) RECREATION ROADS.—The term 'recreation roads' means those public roads that provide access to museums, lakes, reservoirs, visitors centers, gateways to major wilderness areas, public uses areas, recreation and historic sites and for which title is vested in the United States Government.”

(b) FEDERAL SHARE PAYABLE.—

(1) Section 120(k) of such title is amended by striking “Federal-aid highway”.

(2) Sections 120(k) and 120(l) of such title are amended by striking “section 104” each time it appears, and inserting in its place “this title and chapter 53 of title 49”.

(c) PAYMENTS TO FEDERAL AGENCIES FOR FEDERAL-AID PROJECTS.—

Section 132 of such title is amended by striking the first two sentences and inserting the following:

“Where a proposed Federal-aid project is to be undertaken by a Federal agency pursuant to an agreement between a State and such Federal agency, the State may (1) direct the Secretary to transfer the funds for the Federal share of the project directly to the Federal agency, or (2) make a deposit with or payment to such Federal agency as may be required in fulfillment of the State's obligation under such agreement for the work undertaken or to be undertaken by such Federal agency; the Secretary, upon execution of a project agreement with such State for the proposed Federal-aid project, may reimburse the State out of the appropriate appropriations for the estimated Federal share, under the provisions of this title, of the State's obligation so deposited or paid by such State.”.

(d) ALLOCATIONS.—Section 202 of such title is amended--

(1) in subsection (a), by inserting “and grasslands” after “national forests” in the first sentence;

(2) by striking subsection (b) and inserting the following:

“(b) On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for forest highways, after making the transfer of funds

provided for in subsection 204(g) of this title, for each fiscal year as is provided in section 134 of the Federal-Aid Highway Act of 1987, and with respect to these allocations the Secretary shall give equal consideration to projects that provide access to and within the National Forest System, as identified by the Secretary of Agriculture through renewable resource and land use planning and the impact of such planning on existing transportation facilities.”; and

(3) in subsection (d),

(A) in paragraph (1), by striking “1999” in the heading and within paragraph (1) and inserting “2005”;

(B) in paragraph (2), by striking “2000” in the heading and within paragraphs (2)(A), (2)(B), and (2)(D) and inserting “2005”, and by striking “1999” in paragraph (2)(B) and inserting “2004” at each place it appears;

(C) in paragraph (3)(A), by inserting “this chapter and section 125(e) of” after “under”, and by adding “and the approved Indian reservation road transportation improvement program” after “Act”; and

(D) in paragraph (4)(D), by striking the sentence after “Approval Requirement.” and inserting: “Funds for preliminary engineering for Indian reservation road bridge projects under this subsection may be made available by the Secretary upon request by a tribe or by the Secretary of the Interior. Funds for construction and construction engineering shall be made available only after approval of the plans, specifications, and estimates by the Secretary.”.

(e) PLANNING AND AGENCY COORDINATION.—Section 204 of such title is amended—

(1) in subsection (a), by inserting “refuge roads,” after “parkways,”;

(2) in subsection (b), by striking “appropriate contracts” in the second sentence and inserting “appropriate agreements”;

(3) in subsection (k)--

(A) by striking “(2), (5),” and inserting “(2), (3), (5),”;

(B) by striking “and” after the semicolon at the end of paragraph (1)(B);

(C) by striking the period after “improvements” at the end of paragraph (1)(C) and inserting a semicolon;

(D) by adding after paragraph (1)(C) the following new subparagraphs:

“(D) maintenance of public roads in National Fish hatcheries under Fish and Wildlife Service jurisdiction;

“(E) the non-Federal share of the cost of any project funded under this title or chapter 53 of title 49 that provides access to or within a wildlife refuge; and

“(F) maintenance and improvement of recreational trails, but such expenditures on trails are limited to 5 percent of available funding per fiscal year.”.

(f) SAFETY.—

(1) ALLOCATIONS.—Section 202 of such title is amended by adding at the end the following:

“(f) SAFETY.—On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for safety as follows: 10 percent to the Bureau of Reclamation, 15 percent to the Bureau of Indian Affairs, 15 percent to the Bureau of Land Management, 15 percent to the Forest Service, 5 percent to the Fish and Wildlife Service, 15 percent to Military Traffic Management Command, 15 percent to the National Park Service, and 10 percent to the U.S. Army Corps of Engineers. The Secretary, from time to time, may adjust the percentage of safety funds allocated to the Federal agencies listed above based on the outputs of agency safety management systems, other safety need analyses or/studies, and the use of previously allocated safety funds.”.

(2) AVAILABILITY OF FUNDS.—Section 203 of such title is amended in the first sentence by inserting “safety,” after “refuge roads,” at each place it appears.

(3) USE OF FUNDING.—Section 204 is amended by adding at the end the following:

“(l) Safety Activities.—

“(l) IN GENERAL.—Notwithstanding any other provision of this title, funds made available for safety shall be used by the Secretary and the Secretary of the appropriate Federal land management agency only to pay the cost of transportation safety improvement projects, elimination of high accident locations, protection or elimination of

at-grade railway-highway crossings, collection of safety information, transportation planning, bridge inspections, development and operation of safety management systems, highway safety education programs, and other eligible safety activities authorized in Chapter 4 of this title.

“(2) CONTRACTS.—In carrying out paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency, as appropriate, may enter into contracts or agreements with a State, subdivision of a State, or Indian tribe.

“(3) EXCEPTION.—Funds allocated to the Bureau of Reclamation for the purposes described in this subsection are exempted from the cost-share requirements of P.L. 89-72, The Federal Water Recreation Act.”.

(g) Recreation Roads.—

(1) AUTHORIZATIONS.—Section 201 of such title is amended by striking “public lands highways” and inserting “recreation roads”.

(2) ALLOCATIONS.—Section 202 of such title, as amended by this section, is further amended by adding at the end the following:

“(g) RECREATION ROADS.—On October 1 of each fiscal year, the Secretary, after making the transfer provided for in subsection 204(i) of this title, shall allocate the sums authorized to be appropriated for such fiscal year for recreation roads as follows: 6 percent to the Bureau of Reclamation, 6 percent to the U.S. Army Corps of Engineers, 10 percent to the Bureau of Land Management, 10 percent to the Military Traffic Management Command, and 68 percent to the Forest Service. Recreation road funds shall be allocated to projects and activities according to the relative needs of each area served by these roads as indicated in the approved transportation improvement programs for each agency. The Secretary, from time to time, may adjust the percentage of recreation road funds allocated to the Federal agencies listed above based on the outputs of agency management systems, other need analyses/or studies, and the use of previously allocated recreation road funds.”.

(3) AVAILABILITY OF FUNDS.—Section 203 of such title is amended by striking “public lands highways” and inserting “recreation roads” at each place it appears.

(4) USE OF FUNDING.—Section 204 of such title, as amended by this section, is further amended by adding at the end the following:

“(m) RECREATION ROADS.—

“(1) IN GENERAL.—Notwithstanding any other provision of this title, funds made available for recreation roads shall be used by the Secretary and the Secretary of the appropriate Federal land management agency only to pay the cost of—

“(A) maintenance or improvements of existing recreation roads;

“(B) maintenance and improvements of eligible projects described in paragraphs (1), (2), (3), (5), and (6) of subsection (h) that are located in or adjacent to Federal land areas under the jurisdiction of the Departments of Agriculture, Defense, or the Interior;

“(C) transportation planning and administrative costs associated with such maintenance and improvements; and

“(D) the non-Federal share of the cost of any project funded under this title or chapter 53 of title 49 that provides access to or within Federal land areas under the jurisdiction of the Departments of Agriculture, Defense, or the Interior.

“(2) CONTRACTS.—In carrying out paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency, as appropriate, may enter into contracts or agreements with a State or civil subdivision of a State or Indian tribe as is determined advisable.

“(3) NEW ROADS.—No funds available under this section shall be used to pay the cost of the design or construction of new recreation roads.

“(4) COMPLIANCE WITH OTHER ENVIRONMENTAL LAWS.—

Maintenance and improvement projects which are funded under this subsection and are consistent with or have been identified in a land use plan for the Federal area do not require any additional environmental reviews or assessments under the National Environmental Policy Act if the Federal agency that promulgated the land use plan analyzed the specific proposal under the National Environmental Policy Act and there are no significant changes to the proposal bearing on environmental concerns and no significant new information.

"(5) EXCEPTION.--Funds allocated to the Bureau of Reclamation for the purposes described in this subsection are exempted from the cost-share requirements of P.L. 89-72, The Federal Water Recreation Act."

(h) CONFORMING AMENDMENTS.—

(1) Sections 120(e) and 125(e) of title 23, United States Code, are amended by inserting "recreation roads," after "public lands highways," each place the words appear.

(2) Sections 120(e), 125(e), 201, 202(a), 203, section 205 in the heading and in subsections (a) and (d), and the analysis for chapter 2 of such title are amended by striking "forest development roads" and inserting "National Forest System roads" each place the words appear.

(3) Section 204(a)(1) is amended by striking "public lands highways" and inserting "recreation roads, forest highways", section 204(b) is amended by striking "public lands highways" and inserting "recreation roads", and section 204(i) is amended by striking "public lands highways" and inserting "recreation roads and forest highways" each place the words appear.

(4) Section 217(c) is amended by striking " public lands highways" and inserting "refuge roads".

5/12/03

SAFETEA SECTION-BY-SECTION ANALYSIS

SEC. 1804. FEDERAL LANDS HIGHWAYS PROGRAM.

Subsection (a) would amend 23 U.S.C. 101 to include a new definition for “recreation roads” and “public forest service roads,” and change the definitions of “Federal lands highways,” “forest development roads and trails,” and “forest road or trail” to reflect current U.S. Forest Service definitions and a new class of Federal lands highways. It also would delete, as redundant, one of the two current definitions for “public lands highways” in section 101. Eligible recreation roads are public roads under the jurisdiction of the Bureau of Land Management, the Bureau of Reclamation, the Department of Defense, the Forest Service, or the Army Corps of Engineers, and that are owned by the United States.

Subsection (b) would amend 23 U.S.C. 120(k) and (l) by expanding the ability of Federal land managing agencies to pay the non-Federal share of any Federal-aid project funded under 23 U.S.C. 104 to all title 23 Federal-aid highway programs and the Federal transit program funded under Chapter 53 of title 49.

Subsection (c) would amend 23 U.S.C. 132 to allow direct transfers of apportioned funds to Federal agencies, including the Federal Lands Highways program, upon State request.

Subsection (d) would amend the Federal Lands Highways program allocation section, 23 U.S.C. 202, to: (1) eliminate the Public Lands Highways Discretionary category; (2) retain the forest highway subcategory; (3) revise the date on which the Indian Reservation Road fund distribution formula regulation is published, from April 1999 to April 2004, and the year in which the new formula is implemented, from October 1999 to October 2004; (4) clarify which title 23 funds (limited to Chapter 2 and emergency relief funds) are available to Indian tribes under this subsection and what is the relationship between the FHWA-approved Indian reservation road transportation improvement program and the obligation of funds for Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) contracts and agreements; and (5) allow the use of Indian Reservation Road Bridge funds to be used for design as well as construction.

Subsection (e) would amend the Federal Lands Highways program section, 23 U.S.C. 204, to: (1) allow the Secretaries to enter into agreements as well as contracts, and (2) expand the use of refuge road funds to be used for interpretive signage, maintenance of public roads in National Fish hatcheries, payment of the non-Federal share of Federal-aid highway and transit projects, and maintenance and improvement of recreational trails. Funding used for trails would be limited to 5 percent of available funding per fiscal year.

Subsection (f) would create a safety funding category to provided dedicated funds for transportation safety improvement projects, collection of safety information, development and operation of safety management systems, highway safety education programs, and other eligible activities under section 402 of title 23.

Subsection (g) would create a recreation roads funding category to provided dedicated funds for improvement projects for public roads under the jurisdiction of the Bureau of Land Management,

Bureau of Reclamation, Forest Service, Department of Defense, and Army Corps of Engineers, and that are owned by the U.S. Government.

Subsection (h) would provide conforming amendments for consistency with the definition changes made in this section.

5/12/03

§ 101. Definitions and declaration of policy

(7) Federal lands highway.--The term 'Federal lands highway' means a forest highway, **recreation roads, public Forest Service roads**, park road, parkway, refuge road, and Indian reservation road that is a public road.

(8) NATIONAL FOREST SYSTEM ROADS AND TRAILS.—The term 'National Forest System roads and trails' means forest roads or trails under the jurisdiction of the Forest Service.

(9) Forest highway.--The term 'forest highway' means a forest road under the jurisdiction of, and maintained by, a public authority and open to public travel.

(10) FOREST ROAD OR TRAIL.—The term 'forest road or trail' means a road or trail wholly or partly within, or adjacent to, and serving National Forest System lands that is necessary for the protection, administration, use, and development of its resources. There are four types of forest roads:

(A) CLASSIFIED FOREST ROAD.--The term 'classified forest road' means a forest road that the Forest Service determines to be needed for long-term motor vehicle access, including State roads, county roads, privately owned roads, National Forest System roads, and other roads authorized by the Forest Service.

(B) UNCLASSIFIED FOREST ROAD.--The term 'unclassified forest road' means a forest road not managed by the Forest Service as part of the forest transportation system.

(C) TEMPORARY FOREST ROAD.--The term 'temporary forest road' means a forest road that is authorized by the Forest Service through contract, permit, lease, other written authorization, or emergency operation not intended to be a part of the forest transportation system and not necessary for long-term resource management.

(D) PUBLIC FOREST SERVICE ROAD.--The term 'Public Forest Service Road' means a classified forest road that is open to public travel for which title and maintenance responsibility is vested in the United States government and which has been designated a public road by the Forest Service.

(11) Highway.--The term 'highway' includes--

(A) a road, street, and parkway;

(B) a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign, guardrail, and protective structure, in connection with a highway; and

(C) a portion of any interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a State transportation department, including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel.

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

(12) Indian reservation road.--The term `Indian reservation road' means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

(14) Maintenance.--The term `maintenance' means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway.

(19) Park road.--The term `park road' means a public road, including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles, that is located within, or provides access to, an area in the National Park System with title and maintenance responsibilities vested in the United States.

(20) Parkway.--The term `parkway', as used in chapter 2 of this title, means a parkway authorized by Act of Congress on lands to which title is vested in the United States.

(21) Project.--The term `project' means an undertaking to construct a particular portion of a highway, or if the context so implies, the particular portion of a highway so constructed or any other undertaking eligible for assistance under this title.

(22) Project agreement.--The term `project agreement' means the formal instrument to be executed by the State transportation department and the Secretary as required by section 106.

(23) Public authority.--The term `public authority' means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

(24) Public lands development roads and trails.--The term `public lands development roads and trails' means those roads and trails that the Secretary of the Interior determines are of primary importance for the development, protection, administration, and utilization of public lands and resources under the control of the Secretary of the Interior.

(26) Public lands highway.--The term `public lands highway' means a forest road under the jurisdiction of and maintained by a public authority and open to public travel or any highway through ~~unappropriated or unreserved~~ public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by a public authority and open to public travel.

(28) RECREATION ROADS.—The term 'recreation roads' means those public roads that provide access to museums, lakes, reservoirs, visitors centers, gateways to major wilderness areas, public uses areas, recreation and historic sites and for which title is vested in the United States Government.

§ 120. Federal share payable

(a) INTERSTATE SYSTEM PROJECTS.--

(1) In general.--Except as otherwise provided in this chapter, the Federal share payable on account of any project on the Interstate System (including a project to add high occupancy vehicle lanes and a project to add auxiliary lanes but excluding a project to add any other lanes) shall be 90 percent of the total cost thereof, plus a percentage of the remaining 10 percent of such cost in any State containing unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 percent of the total area of all lands therein, equal to the percentage that the area of such lands in such State is of its total area; except that such Federal share payable on any project in any State shall not exceed 95 percent of the total cost of such project.

(2) State-determined lower federal share.--In the case of any project subject to paragraph (1), a State may determine a lower Federal share than the Federal share determined under such paragraph.

(b) OTHER PROJECTS.--Except as otherwise provided in this title, the Federal share payable on account of any project or activity carried out under this title (other than a project subject to subsection (a)) shall be--

(1) 80 percent of the cost thereof, except that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments, exceeding 5 percent of the total area of all lands therein, the Federal share, for purposes of this chapter, shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area; or

(2) 80 percent of the cost thereof, except that in the case of any State containing nontaxable Indian lands, individual and tribal, public domain lands (both reserved and unreserved), national forests, and national parks and monuments, the Federal share, for purposes of this chapter, shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State is of its total area; except that the Federal share payable on any project in a State shall not exceed 95 percent of the total cost of any such project. In any case where a State elects to have the Federal share provided in paragraph (2) of this subsection, the State must enter into an agreement with the Secretary covering a period of not less than 1 year, requiring such State to use solely for purposes eligible for assistance under this title (other than paying its share of projects approved under this title) during the period covered by such agreement the difference between the State's share as provided in paragraph (2) and what its share would be if it elected to pay the share provided in paragraph (1) for all projects subject to such agreement. In the case of any project subject to this subsection, a State may determine a lower Federal share than the Federal share determined under the preceding sentences of this subsection.

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

(c) INCREASED FEDERAL SHARE FOR CERTAIN SAFETY PROJECTS.--The Federal share payable on account of any project for traffic control signalization, safety rest areas, pavement marking, commuter carpooling and vanpooling, rail-highway crossing closure, or installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier end treatments, breakaway utility poles, or priority control systems for emergency vehicles or transit vehicles at signalized intersections may amount to 100 percent of the cost of construction of such projects; except that not more than 10 percent of all sums apportioned for all the Federal-aid systems for any fiscal year in accordance with section 104 of this title shall be used under this subsection. In this subsection the term "safety rest area" means an area where motor vehicle operators can park their vehicles and rest, where food, fuel, and lodging services are not available, and that is located on a segment of highway with respect to which the Secretary determines there is a shortage of public and private areas at which motor vehicle operators can park their vehicles and rest.

(d) The Secretary may rely on a statement from the Secretary of the Interior as to the area of the lands referred to in subsections (a) and (b) of this section. The Secretary of the Interior is authorized and directed to provide such statement annually.

(e) Emergency Relief.- The Federal share payable on account of any repair or reconstruction provided for by funds made available under section 125 of this title on account of any project on a Federal-aid highway, including the Interstate System, shall not exceed the Federal share payable on a project on such system as provided in subsections (a) and (b) of this section; except that (1) the Federal share payable for eligible emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof; and (2) the Federal share payable on account of any repair or reconstruction of forest highways, **National Forest System roads** and trails, park roads and trail, parkways, public lands highways, **recreation roads**, public lands development roads and trails, and Indian reservation roads may amount to 100 percent of the cost thereof. The total cost of a project may not exceed the cost of repair or reconstruction of a comparable facility. As used in this section with respect to bridges and in section 144 of this title, "a comparable facility" shall mean a facility which meets the current geometric and construction standards required for the types and volume of traffic which such facility will carry over its design life.

(f) The Secretary is authorized to cooperate with the State transportation departments and with the Department of the Interior in the construction of Federal-aid highways within Indian reservations and national parks and monuments under the jurisdiction of the Department of the Interior and to pay the amount assumed therefor from the funds apportioned in accordance with section 104 of this title to the State wherein the reservations and national parks and monuments are located.

(g) At the request of any State, the Secretary may from time to time enter into agreements with such State to reimburse the State for the Federal share of the costs of preliminary and construction engineering at an agreed percentage of actual construction costs for each project, in lieu of the actual engineering costs for such project. The Secretary shall annually review each such agreement to insure that such percentage reasonably represents the engineering costs actually incurred by such State.

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

(h) Notwithstanding any other provision of this section or of this title, the Federal share payable on account of any project under this title in the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands shall be 100 per centum of the total cost of the project.

(i) Increased Non-Federal Share.- Notwithstanding any other provision of this title and subject to such criteria as the Secretary may establish, a State may contribute an amount in excess of the non-Federal share of a project under this title so as to decrease the Federal share payable on such project.

(j) Credit for Non-Federal Share.—

(1) Eligibility.--A State may use as a credit toward the non-Federal share requirement for any funds made available to carry out this title (other than the emergency relief program authorized by section 125) or chapter 53 of title 49 toll revenues that are generated and used by public, quasi-public, and private agencies to build, improve, or maintain highways, bridges, or tunnels that serve the public purpose of interstate commerce. Such public, quasi-public, or private agencies shall have built, improved, or maintained such facilities without Federal funds.

(2) Maintenance of effort.--

(A) In general.--The credit for any non-Federal share provided under this subsection shall not reduce nor replace State funds required to match Federal funds for any program under this title.

(B) Condition on receipt of credit.--To receive a credit under paragraph (1) for a fiscal year, a State shall enter into such agreement as the Secretary may require to ensure that the State will maintain its non-Federal transportation capital expenditures in such fiscal year at or above the average level of such expenditures for the preceding 3 fiscal years; except that if, for any 1 of the preceding 3 fiscal years, the non-Federal transportation capital expenditures of the State were at a level that was greater than 130 percent of the average level of such expenditures for the other 2 of the preceding 3 fiscal years, the agreement shall ensure that the State will maintain its non-Federal transportation capital expenditures in the fiscal year of the credit at or above the average level of such expenditures for the other 2 fiscal years.

(C) Transportation capital expenditures defined.--In subparagraph (B), the term 'non-Federal transportation capital expenditures' includes any payments made by the State for issuance of transportation-related bonds.

(3) Treatment.--

(A) Limitation on liability.--Use of a credit for a non-Federal share under this subsection that is received from a public, quasi-public, or private agency--

(i) shall not expose the agency to additional liability, additional regulation, or additional administrative oversight; and

(ii) shall not subject the agency to any additional Federal design standards or laws (including regulations) as a result of providing the non-Federal share other than those to which the agency is already subject.

(B) Chartered multistate agencies.--When a credit that is received from a chartered multistate agency is applied to a non-Federal share under this subsection, such credit shall be applied equally to all charter States.

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

(k) Use of Federal Land Management Agency Funds.-- Notwithstanding any other provision of law, the funds appropriated to any Federal land management agency may be used to pay the non-Federal share of the cost of any project the Federal share of which is funded under **this title and chapter 53 of title 49**.

(l) Use of Federal Lands Highways Program Funds.-- Notwithstanding any other provision of law, the funds authorized to be appropriated to carry out the Federal lands highways program under section 204 may be used to pay the non-Federal share of the cost of any project that is funded under **this title and chapter 53 of title 49** and that provides access to or within Federal or Indian lands.

§ 125. Emergency relief

(a) General Eligibility.--Subject to this section and section 120, an emergency fund is authorized for expenditure by the Secretary for the repair or reconstruction of highways, roads, and trails, in any part of the United States, including Indian reservations, that the Secretary finds have suffered serious damage as a result of--

- (1) natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or
- (2) catastrophic failure from any external cause.

(b) Restriction on Eligibility.--In no event shall funds be used pursuant to this section for the repair or reconstruction of bridges that have been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration.

(c) Funding.--Subject to the following limitations, there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to establish the fund authorized by this section and to replenish it on an annual basis:

- (1) Not more than \$100,000,000 is authorized to be obligated in any 1 fiscal year commencing after September 30, 1998, to carry out the provisions of this section; except that, if in any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated in such fiscal year, the unobligated balance of such amount shall remain available until expended and shall be in addition to amounts otherwise available to carry out this section each year.
- (2) Pending such appropriation or replenishment, the Secretary may obligate from any funds heretofore or hereafter appropriated for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized. Funds obligated under this paragraph shall be reimbursed from such appropriation or replenishment.

(d) The Secretary may expend funds from the emergency fund herein authorized for the repair or reconstruction of highways on Federal-aid highways in accordance with the provisions of this chapter: Provided, That (1) obligations for projects under this section, including those on highways, roads, and trails mentioned in subsection (e) of this section, resulting from a single natural disaster or a single catastrophic failure in a State shall not exceed \$100,000,000, and (2) the total obligations for projects under this section in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not exceed \$20,000,000. Notwithstanding any provision of this chapter actual and necessary costs of maintenance and operation of ferryboats providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

emergency fund herein authorized on Federal-aid highways. Except as to highways, roads, and trails mentioned in subsection (e) of this section, no funds shall be so expended unless the Secretary has received an application therefor from the State transportation departments, and unless an emergency has been declared by the Governor of the State and concurred in by the Secretary, except that if the President has declared such emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) concurrence of the Secretary is not required.

(e) The Secretary may expend funds from the emergency fund herein authorized, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of forest highways, **National Forest System roads** and trails, park roads and trails, parkways, public lands highways, **recreation roads**, public lands development roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are Federal-aid highways.

(f) Treatment of Territories.--For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be considered to be States and parts of the United States, and the chief executive officer of each such territory shall be considered to be a Governor of a State.

§ 132. Payment on Federal-aid projects undertaken by a Federal agency

Where a proposed Federal-aid project is to be undertaken by a Federal agency pursuant to an agreement between a State and such Federal agency, the State **may (1) direct the Secretary to transfer the funds for the Federal share of the project directly to the Federal agency, or (2)** make a deposit with or payment to such Federal agency as may be required in fulfillment of the State's obligation under such agreement for the work undertaken or to be undertaken by such Federal agency; the Secretary, upon execution of a project agreement with such State for the proposed Federal-aid project, may reimburse the State out of the appropriate appropriations for the estimated Federal share, under the provisions of this title, of the State's obligation so deposited or paid by such State. Upon completion of such project and its acceptance by the Secretary, an adjustment shall be made in such Federal share payable on account of such project based on the final cost thereof. Any sums reimbursed to the State under this section which may be in excess of the Federal pro rata share under the provisions of this title of the State's share of the cost as set forth in the approved final voucher submitted by the State shall be recovered and credited to the same class of funds from which the Federal payment under this section was made.

§ 201. Authorizations

The provision of this title shall apply to all unappropriated authorizations contained in prior Acts, and also to all unexpended appropriations heretofore made, providing for the expenditure of Federal funds on the following classes of highways: Forest highways, **National Forest System roads** and trails, park road, parkways, Indian reservation roads, refuge roads, **recreation roads**, and defense access roads. All such authorizations and appropriations shall continue in full force and effect, but hereafter obligations entered into and expenditures made pursuant thereto shall be subject to the provisions of this title.

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

§ 202. Allocations

(a) On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for **National Forest System roads** and trails according to the relative needs of the various national forests **and grasslands**. Such allocation shall be consistent with the renewable resource and land use planning for the various national forests

(b) On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for forest highways, after making the transfer of funds provided for in subsection 204(g) of this title, for each fiscal year as is provided in section 134 of the Federal-Aid Highway Act of 1987, and with respect to these allocations the Secretary shall give equal consideration to projects that provide access to and within the National Forest System, as identified by the Secretary of Agriculture through renewable resource and land use planning and the impact of such planning on existing transportation facilities.

(c) On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for park roads and parkways each according to the relative needs of the various elements of the national park system, taking into consideration the need for access as identified through land use planning and the impact of such planning on existing transportation facilities.

(d) INDIAN RESERVATION ROADS.--

(1) FOR FISCAL YEARS ENDING BEFORE OCTOBER 1, **2005**.-- On October 1 of each fiscal year ending before October 1, **2005**, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for Indian reservation roads according to the relative needs of the various reservations as jointly identified by the Secretary and the Secretary of the Interior.

(2) FISCAL YEAR **2005** AND THEREAFTER.--

(A) IN GENERAL.--All funds authorized to be appropriated for Indian reservation roads shall be allocated among Indian tribes for fiscal year **2005** and each subsequent fiscal year in accordance with a formula established by the Secretary of the Interior under a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

(B) REGULATIONS.--Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary of the Interior shall issue regulations governing the Indian reservation roads program, and establishing the funding formula for fiscal year **2005** and each subsequent fiscal year under this paragraph, in accordance with a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5. The regulations shall be issued in final form not later than April 1, **2004**, and shall take effect not later than October 1, **2004**.

(C) NEGOTIATED RULEMAKING COMMITTEE.--In establishing a negotiated rulemaking committee to carry out subparagraph (B), the Secretary of the Interior shall--

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

(i) apply the procedures under subchapter III of chapter 5 of title 5 in a manner that reflects the unique government-to- government relationship between the Indian tribes and the United States; and

(ii) ensure that the membership of the committee includes only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes.

(D) BASIS FOR FUNDING FORMULA.--The funding formula established for fiscal year **2005** and each subsequent fiscal year under this paragraph shall be based on factors that reflect--

(i) the relative needs of the Indian tribes, and reservation or tribal communities, for transportation assistance; and

(ii) the relative administrative capacities of, and challenges faced by, various Indian tribes, including the cost of road construction in each Bureau of Indian Affairs area, geographic isolation and difficulty in maintaining all-weather access to employment, commerce, health, safety, and educational resources.

(3) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.--

(A) IN GENERAL.--Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available under this **chapter and section 125(e) of this** title for Indian reservation roads and for highway bridges located on Indian reservation roads to pay for the costs of programs, services, functions, and activities, or portions thereof, that are specifically or functionally related to the cost of planning, research, engineering, and construction of any highway, road, bridge, parkway, or transit facility that provides access to or is located within the reservation or community of an Indian tribe shall be made available, upon request of the Indian tribal government, to the Indian tribal government for contracts and agreements for such planning, research, engineering, and construction in accordance with the Indian Self-Determination and Education Assistance Act **and the approved Indian reservation road transportation improvement program.**

(B) EXCLUSION OF AGENCY PARTICIPATION.--Funds for programs, functions, services, or activities, or portions thereof, including supportive administrative functions that are otherwise contractible to which subparagraph (A) applies, shall be paid in accordance with subparagraph (A) without regard to the organizational level at which the Department of the Interior that has previously carried out such programs, functions, services, or activities.

(4) RESERVATION OF FUNDS.--

(A) NATIONWIDE PRIORITY PROGRAM.--The Secretary shall establish a nationwide priority program for improving deficient Indian reservation road bridges.

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

(B) RESERVATION.--Of the amounts authorized to be appropriated for Indian reservation roads for each fiscal year, the Secretary, in cooperation with the Secretary of the Interior, shall reserve not less than \$13,000,000 for projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmental acceptable, minimally corrosive anti-icing and de-icing compositions, or install scour countermeasures for deficient Indian reservation road bridges, including multiple-pipe culverts.

(C) ELIGIBLE BRIDGES.--To be eligible to receive funding under this subsection, a bridge described in subparagraph (A) must--

- (i) have an opening of 20 feet or more;
- (ii) be on an Indian reservation road;
- (iii) be unsafe because of structural deficiencies, physical deterioration, or functional obsolescence; and
- (iv) be recorded in the national bridge inventory administered by the Secretary under subsection (b).

(D) APPROVAL REQUIREMENT.-- Funds for preliminary engineering for Indian reservation road bridge projects under this subsection may be made available by the Secretary upon request by a tribe or by the Secretary of the Interior. Funds for construction and construction engineering shall be made available only after approval of the plans, specifications, and estimates by the Secretary.

(e) REFUGE ROADS.--On October 1 of each fiscal year, the Secretary shall allocate the sums made available for that fiscal year for refuge roads according to the relative needs of the various refuges in the National Wildlife Refuge System, and taking into consideration--

- (1) the comprehensive conservation plan for each refuge;
- (2) the need for access as identified through land use planning; and
- (3) the impact of land use planning on existing transportation facilities.

(f) SAFETY.—On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for safety as follows: 10 percent to the Bureau of Reclamation, 15 percent to the Bureau of Indian Affairs, 15 percent to the Bureau of Land Management, 15 percent to the Forest Service, 5 percent to the Fish and Wildlife Service, 15 percent to Military Traffic Management Command, 15 percent to the National Park Service, and 10 percent to the U.S. Army Corps of Engineers. The Secretary, from time to time, may adjust the percentage of safety funds allocated to the Federal agencies listed above based on the outputs of agency safety management systems, other safety need analyses or/studies, and the use of previously allocated safety funds.

(g) **RECREATION ROADS.**—On October 1 of each fiscal year, the Secretary, after making the transfer provided for in subsection 204(i) of this title, shall allocate the sums authorized to be appropriated for such fiscal year for recreation roads as follows: 6 percent to the Bureau of Reclamation, 6 percent to the U.S. Army Corps of Engineers, 10 percent to the Bureau of Land Management, 10 percent to the Military Traffic Management Command, and 68 percent to the Forest Service. Recreation road funds shall be allocated to projects and activities according to the relative needs of each area served by these roads as indicated in the approved transportation improvement programs for each agency. The Secretary, from time to time, may adjust the percentage of recreation road funds allocated to the Federal agencies listed above based on the outputs of agency management systems, other need analyses/or studies, and the use of previously allocated recreation road funds.

§ 203. Availability of Funds

Funds authorized for **National Forest System roads** and trails, public lands development roads and trails, park road, parkways, refuge roads, **safety**, Indian reservation roads, and **recreation roads** shall be available for contract upon apportionment, or on October 1 of the fiscal year for which authorized if no apportionment is required. Any amount remaining unexpended for a period of three years after the close of the fiscal year for which authorized shall lapse. The Secretary of the Department charged with the administration of such funds is granted authority to incur obligations, approve projects, and enter into contracts under such authorizations and his action in doing so shall be deemed a contractual obligation of the United States for the payment of the cost thereof and such funds shall be deemed to have been expended when so obligated. Any funds heretofore or hereafter authorized for any fiscal year for **National Forest System roads** and trails, public lands development roads and trails, park road, parkways, refuge roads, **safety**, Indian roads and **recreation roads** shall be deemed to have been expended if a sum equal to the total of the sums authorized for such fiscal year and previous fiscal years since and including the fiscal year ending June 30, 1955, shall have been obligated. Any of such funds released by payment of final voucher or modification of project authorizations shall be credited to the balance of unobligated authorizations and be immediately available for expenditure. Notwithstanding any other provision of law, the authorization by the Secretary of engineering and related work for a Federal lands highways program project, or the approval by the Secretary of plans, specifications, and estimates for construction of a Federal lands highways program project, shall be deemed to constitute a contractual obligation of the Federal Government to pay the Federal share of the cost of the project.

§ 204. Federal Lands Highway Program

(a) ESTABLISHMENT.--

(1) IN GENERAL.--Recognizing the need for all Federal roads that are public roads to be treated under uniform policies similar to the policies that apply to Federal-aid highways, there is established a coordinated Federal lands highways program that shall apply to **recreation roads**, **forest highways**, park roads and parkways, refuge roads, and Indian reservation roads and bridges.

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

(2) TRANSPORTATION PLANNING

PROCEDURES.--In consultation with the Secretary of each appropriate Federal land management agency, the Secretary shall develop, by rule, transportation planning procedures that are consistent with the metropolitan and statewide planning processes required under sections 134 and 135.

(3) APPROVAL OF TRANSPORTATION IMPROVEMENT PROGRAM.--The transportation improvement program developed as a part of the transportation planning process under this section shall be approved by the Secretary.

(4) INCLUSION IN OTHER PLANS.--All regionally significant Federal lands highways program projects--

(A) shall be developed in cooperation with States and metropolitan planning organizations; and

(B) shall be included in appropriate Federal lands highways program, State, and metropolitan plans and transportation improvement programs.

(5) INCLUSION IN STATE PROGRAMS.--The approved Federal lands highways program transportation improvement program shall be included in appropriate State and metropolitan planning organization plans and programs without further action on the transportation improvement program.

(6) DEVELOPMENT OF SYSTEMS.--The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program.

(b) Funds available for **forest highways**, park roads and parkways, and Indian reservation roads shall be used by the Secretary and the Secretary of the appropriate Federal land management agency to pay for the cost of transportation planning, research, engineering, and construction of the highways, roads, and parkways, or of transit facilities within public lands, national parks, and Indian reservations. In connection with activities under the preceding sentence, the Secretary and the Secretary of the appropriate Federal land management agency may enter into construction contracts and other appropriate **agreements** with a State or civil subdivision of a State or Indian tribe. In the case of Indian reservation roads, Indian labor may be employed in such construction and improvement under such rules and regulations as may be prescribed by the Secretary of the Interior. No ceiling on Federal employment shall be applicable to construction or improvement of Indian reservation roads. Funds available for each class of Federal lands highways shall be available for any kind of transportation project eligible for assistance under this title that is within or adjacent to or provides access to the areas served by the particular class of Federal lands highways. The Secretary of Interior may reserve funds from the Bureau of Indian Affairs' administrative funds associated with the Indian reservation roads program to finance the Indian technical centers authorized under section 504(b).

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

(c) Before approving as a project on an Indian reservation road any project eligible for funds apportioned under section 104 or section 144 of this title in a State, the Secretary must determine that the obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Indian reservation roads, of a fair and equitable share of funds apportioned to such State under section 104 of this title. Notwithstanding any other provision of this title, Indian reservation roads under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior shall be eligible to expend not more than 15 percent funds apportioned for Indian reservation roads from the Highway Trust Fund for the purpose of road sealing projects. The Bureau of Indian Affairs shall continue to retain responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations.

(d) Cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement, and any funds received from a State, county, or local subdivision shall be credited to appropriations available for the class of Federal lands highways to which such funds were contributed.

(e) Construction of each project shall be performed by contract awarded by competitive bidding, unless the Secretary of the appropriate Federal land management agency shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest. Notwithstanding the foregoing, the provisions of section 23 of the "Buy Indian" Act of June 25, 1910 (36 Stat. 891), and the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (88 Stat. 2205) shall apply to all funds administered by the Secretary of the Interior which are appropriated for the construction and improvement of Indian reservation roads.

(f) All appropriations for the construction and improvement of each class of Federal lands highways shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the appropriate Federal land managing agency.

(g) The Secretary shall transfer to the Secretary of Agriculture from appropriations for forest highways such amounts as may be needed to cover necessary administrative expenses of the Forest Service in connection with forest highways.

(h) **ELIGIBLE PROJECTS.**--Funds available for each class of Federal lands highways may be available for the following:

- (1) Transportation planning for tourism and recreational travel including the National Forest Scenic Byways Program, Bureau of Land Management Back Country Byways Program, National Trail System Program, and other similar Federal programs that benefit recreational development.
- (2) Adjacent vehicular parking areas.
- (3) Interpretive signage.
- (4) Acquisition of necessary scenic easements and scenic or historic sites.
- (5) Provision for pedestrians and bicycles.
- (6) Construction and reconstruction of roadside rest areas including sanitary and water facilities.
- (7) Other appropriate public road facilities such as visitor centers as determined by the Secretary.
- (8) A project to build a replacement of the federally owned bridge over the Hoover Dam in the Lake Mead National Recreation Area between Nevada and Arizona.

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

(i) TRANSFERS OF COSTS TO SECRETARIES OF FEDERAL LAND MANAGEMENT AGENCIES.--

(1) ADMINISTRATIVE COSTS.--The Secretary shall transfer to the appropriate Federal land management agency from amounts made available for **recreation roads** such amounts as are necessary to pay necessary administrative costs of the agency in connection with public lands highways.

(2) TRANSPORTATION PLANNING COSTS.--The Secretary shall transfer to the appropriate Federal land management agency from amounts made available for **recreation roads** such amounts as are necessary to pay the cost to the agency to conduct necessary transportation planning for Federal lands, if funding for the planning is not otherwise provided under this section.

(j) INDIAN RESERVATION ROADS PLANNING.--Up to 2 percent of funds made available for Indian reservation roads for each fiscal year shall be allocated to those Indian tribal governments applying for transportation planning pursuant to the provisions of the Indian Self-Determination and Education Assistance Act. The Indian tribal government, in cooperation with the Secretary of the Interior, and as appropriate, with a State, local government, or metropolitan planning organization, shall carry out a transportation planning process in accordance with subsection (a). Projects shall be selected by the Indian tribal government from the transportation improvement program and shall be subject to the approval of the Secretary of the Interior and the Secretary.

(k) REFUGE ROADS.--

(1) IN GENERAL.--Notwithstanding any other provision of this title, funds made available for refuge roads shall be used by the Secretary and the Secretary of the Interior only to pay the cost of--

- (A) maintenance and improvements of refuge roads;
- (B) maintenance and improvements of eligible projects described in paragraphs (2), (3), (5), and (6) of subsection (h) that are located in or adjacent to wildlife refuges;
- (C) administrative costs associated with such maintenance and improvements;
- (D) **maintenance of public roads in National Fish hatcheries under Fish and Wildlife Service jurisdiction;**
- (E) **the non-Federal share of the cost of any project funded under this title or chapter 53 of title 49 that provides access to or within a wildlife refuge; and**
- (F) **maintenance and improvement of recreational trails, but such expenditures on trails are limited to 5 percent of available funding per fiscal year.**

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

(2) **CONTRACTS.**--In carrying out paragraph (1), the Secretary and the Secretary of the Interior, as appropriate, may enter into contracts with a State or civil subdivision of a State or Indian tribe as is determined advisable.

(3) **COMPLIANCE WITH OTHER LAW.**--Funds made available for refuge roads shall be used only for projects that are in compliance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

(l) Safety Activities.—

(1) **IN GENERAL.**—Notwithstanding any other provision of this title, funds made available for safety shall be used by the Secretary and the Secretary of the appropriate Federal land management agency only to pay the cost of transportation safety improvement projects, elimination of high accident locations, protection or elimination of at-grade railway-highway crossings, collection of safety information, transportation planning, bridge inspections, development and operation of safety management systems, highway safety education programs, and other eligible safety activities authorized in Chapter 4 of this title.

(2) **CONTRACTS.**—In carrying out paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency, as appropriate, may enter into contracts or agreements with a State, subdivision of a State, or Indian tribe.

(3) **EXCEPTION.**--Funds allocated to the Bureau of Reclamation for the purposes described in this subsection are exempted from the cost-share requirements of P.L. 89-72, The Federal Water Recreation Act.

(m) RECREATION ROADS.—

(1) **IN GENERAL.**—Notwithstanding any other provision of this title, funds made available for recreation roads shall be used by the Secretary and the Secretary of the appropriate Federal land management agency only to pay the cost of—

(A) maintenance or improvements of existing recreation roads;

(B) maintenance and improvements of eligible projects described in paragraphs (1), (2), (3), (5), and (6) of subsection (h) that are located in or adjacent to Federal land areas under the jurisdiction of the Departments of Agriculture, Defense, or the Interior;

(C) transportation planning and administrative costs associated with such maintenance and improvements; and

(D) the non-Federal share of the cost of any project funded under this title or chapter 53 of title 49 that provides access to or within Federal land areas under the jurisdiction of the Departments of Agriculture, Defense, or the Interior.

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

(2) CONTRACTS.—In carrying out paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency, as appropriate, may enter into contracts or agreements with a State or civil subdivision of a State or Indian tribe as is determined advisable.

(3) NEW ROADS.—No funds available under this section shall be used to pay the cost of the design or construction of new recreation roads.

(4) COMPLIANCE WITH OTHER ENVIRONMENTAL LAWS.—Maintenance and improvement projects which are funded under this subsection and are consistent with or have been identified in a land use plan for the Federal area do not require any additional environmental reviews or assessments under the National Environmental Policy Act if the Federal agency that promulgated the land use plan analyzed the specific proposal under the National Environmental Policy Act and there are no significant changes to the proposal bearing on environmental concerns and no significant new information.

(5) EXCEPTION.--Funds allocated to the Bureau of Reclamation for the purposes described in this subsection are exempted from the cost-share requirements of P.L. 89-72, The Federal Water Recreation Act.

§ 205. National Forest System roads and trails

(a) Funds available for **National Forest System roads** and trails shall be used by the Secretary of Agriculture to pay for the costs of construction and maintenance thereof, including roads and trails on experimental and other areas under Forest Service administration. In connection therewith, the Secretary of Agriculture may enter into contracts with a State or civil subdivision thereof, and issue such regulations as he deems advisable.

(b) Cooperation of States, counties, or other local subdivisions may be accepted but shall not be required by the Secretary of Agriculture.

(c) Construction estimated to cost \$50,000 or more per mile or \$50,000 or more per project for projects with a length of less than one mile, exclusive of bridges and engineering, shall be advertised and let to contract. If such estimated cost is less than \$50,000 per mile or \$50,000 per project for projects with a length of less than one mile or if, after proper advertising, no acceptable bid is received or the bids are deemed excessive, the work may be done by the Secretary of Agriculture on his own account.

(d) Funds available for **National Forest System roads** and trails shall be available for adjacent vehicular parking areas and for sanitary, water, and fire control facilities.

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

§ 217. Bicycle transportation and pedestrian walkways

(a) **USE OF STP AND CONGESTION MITIGATION PROGRAM FUNDS.**--Subject to project approval by the Secretary, a State may obligate funds apportioned to it under sections 104(b)(2) and 104(b)(3) of this title for construction of pedestrian walkways and bicycle transportation facilities and for carrying out nonconstruction projects related to safe bicycle use.

(b) **USE OF NATIONAL HIGHWAY SYSTEM FUNDS.**--Subject to project approval by the Secretary, a State may obligate funds apportioned to it under section 104(b)(1) of this title for construction of pedestrian walkways and bicycle transportation facilities on land adjacent to any highway on the National Highway System.

(c) **USE OF FEDERAL LANDS HIGHWAY FUNDS.**--Funds authorized for forest highways, forest development roads and trails, public lands development roads and trails, park roads, parkways, Indian reservation roads, and **recreation roads** shall be available, at the discretion of the department charged with the administration of such funds, for the construction of pedestrian walkways and bicycle transportation facilities in conjunction with such trails, roads, highways, and parkways.

(d) **STATE BICYCLE AND PEDESTRIAN COORDINATORS.**--Each State receiving an apportionment under sections 104(b)(2) and 104(b)(3) of this title shall use such amount of the apportionment as may be necessary to fund in the State department of transportation a position of bicycle and pedestrian coordinator for promoting and facilitating the increased use of nonmotorized modes of transportation, including developing facilities for the use of pedestrians and bicyclists and public education, promotional, and safety programs for using such facilities.

(e) **BRIDGES.**--In any case where a highway bridge deck being replaced or rehabilitated with Federal financial participation is located on a highway, on which bicycles are permitted to operate at each end of such bridge, and the Secretary determines that the safe accommodation of bicycles can be provided at reasonable cost as part of such replacement or rehabilitation, then such bridge shall be so replaced or rehabilitated as to provide such safe accommodations.

(f) **FEDERAL SHARE.**--For all purposes of this title, construction of a pedestrian walkway and a bicycle transportation facility shall be deemed to be a highway project and the Federal share payable on account of such construction shall be determined in accordance with section 120(b).

(g) **Planning and Design.**--

- (1) In general.--Bicyclists and pedestrians shall be given due consideration in the comprehensive transportation plans developed by each metropolitan planning organization and State in accordance with sections 134 and 135, respectively. Bicycle transportation facilities and pedestrian walkways shall be considered, where appropriate, in conjunction with all new construction and reconstruction of transportation facilities, except where bicycle and pedestrian use are not permitted.

Title 23 Sections after SAFETEA Section 1804 changes only

515/03

Additions and changes shown in bold type

(2) Safety considerations.--Transportation plans and projects shall provide due consideration for safety and contiguous routes for bicyclists and pedestrians. Safety considerations shall include the installation, where appropriate, and maintenance of audible traffic signals and audible signs at street crossings.

(h) USE OF MOTORIZED VEHICLES.--Motorized vehicles may not be permitted on trails and pedestrian walkways under this section, except for--

- (1) maintenance purposes;
- (2) when snow conditions and State or local regulations permit, snowmobiles;
- (3) motorized wheelchairs;
- (4) when State or local regulations permit, electric bicycles; and
- (5) such other circumstances as the Secretary deems appropriate.

(i) TRANSPORTATION PURPOSE.--No bicycle project may be carried out under this section unless the Secretary has determined that such bicycle project will be principally for transportation, rather than recreation, purposes.

(j) Definitions.--In this section, the following definitions apply:

- (1) Bicycle transportation facility.--The term 'bicycle transportation facility' means a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.
- (2) Electric bicycle.--The term 'electric bicycle' means any bicycle or tricycle with a low-powered electric motor weighing under 100 pounds, with a top motor-powered speed not in excess of 20 miles per hour.
- (3) Pedestrian.--The term 'pedestrian' means any person traveling by foot and any mobility impaired person using a wheelchair.
- (4) Wheelchair.--The term 'wheelchair' means a mobility aid, usable indoors, and designed for and used by individuals with mobility impairments, whether operated manually or motorized.

SAFETEA Proposed
Title 49 Indian Lands Transit Provisions

§ 5311(h) INDIAN RESERVATION RURAL TRANSIT PROGRAM—

(1) In this subsection, the term `Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(2)

(A) The Secretary shall establish and carry out through the States a program to provide grants to Indian tribes to operate, maintain, and establish rural transit programs on reservations or other land under the jurisdiction of the Indian tribes.

(B) The state may waive or reduce the amount of local share required for these grants.

(3) Notwithstanding any other provision of law, for each fiscal year, of the amount made available to carry out this section under section 5338(a)(2)(K) for the fiscal year, the Secretary shall make available \$10,000,000 to carry out this subsection.

(4) Of the funds made available pursuant to paragraph (3) of this subsection,

(A) \$9,500,000 shall be apportioned to the states based on a ratio equal to the tribal population in each state divided by the total tribal population in all states, as shown by the latest decennial census of population for allocation to existing Indian tribal rural transit programs and to plan and establish new Indian tribe rural transit programs;

(B) prior to distribution by states of in-state amounts to Indian tribes, each State may use up to 5 percent for state administration;

(C) amounts apportioned to a state under paragraph (A) of this subsection shall be distributed to Indian tribes in the state based on an allocation plan--

"(i) the state develops in cooperation with Indian tribes;

"(ii) the Secretary approves; and

SAFETEA Proposed
Title 49 Indian Lands Transit Provisions

"(iii) that provides an appropriate distribution for funding the needs of existing and new Indian Reservation Rural Transit Systems; and

(D) \$500,000 shall be available to the Secretary to provide technical assistance, including best practices and outreach, to the states and tribes through grants, contracts, or other arrangements and shall be in addition to and not in lieu of other funds available for these purposes.

(5) An amount apportioned to the states under this subsection--

(A) remains available for 3 years after the fiscal year in which the amount was apportioned; and

(B) shall be reapportioned among the states if unobligated at the end of the 3-year period.

SAFETEA Proposed
Title 49 Indian Lands Transit Provisions

§ 5316. National parks and public lands Legacy Project

(a) IN GENERAL.—

(1) The Secretary of Transportation, in consultation with the Secretary of the Interior, may make a grant or enter into a contract, cooperative agreement, interagency agreement, intra-agency agreement, or other transaction to carry out a qualified project under this section to enhance the protection of America's National Parks and public lands and increase the enjoyment of those visiting the parks and public lands by ensuring access to all, including the disabled, improving conservation and park and public land opportunities in urban areas through partnering with state and local governments, and improving park and public land transportation infrastructure.

(2) A grant, cooperative agreement, interagency agreement, intra-agency agreement, or other transaction for a qualified project under this section shall be available to finance the leasing of equipment and facilities for use in public transportation, subject to any regulation that the Secretary may prescribe limiting the grant or agreement to leasing arrangements that are more cost-effective than purchase or construction.

(b) DEFINITIONS.—In this section—

(1) 'eligible area' means any Federally owned or managed park, refuge, or recreational area that is open to the general public, including--

- (A) a unit of the National Park System;
- (B) a unit of the National Wildlife Refuge System;
- (C) a recreational area managed by the Bureau of Land Management; and
- (D) a recreation area managed by the Bureau of Reclamation.

(2) 'Federal land management agency' means a Federal agency that manages an eligible area.

SAFETEA Proposed
Title 49 Indian Lands Transit Provisions

(3) 'public transportation' means transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service.

(4) 'qualified participant' means—

(A) a Federal land management agency; or

(B) a State, tribal, or local governmental authority with jurisdiction over land in the vicinity of an eligible area acting with the consent of the Federal land management agency, alone or in partnership with a Federal land management agency or other Governmental or nongovernmental participant.

(5) 'qualified project' means a planning or capital project in or in the vicinity of an eligible area that—

(A) is an activity described in section 5302, 5303, or 5304;

(B) involves—

(i) the purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on the date of enactment of this section with clean fuel vehicles; or

(ii) the deployment of public transportation vehicles that introduce innovative technologies or methods;

(C) relates to the capital costs of coordinating the Federal land management agency public transportation systems with other public transportation systems;

(D) provides a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft);

(E) provides waterborne access within or in the vicinity of an eligible area, as appropriate to and consistent with this section; or

(F) is any other public transportation project that—

(i) enhances the environment;

SAFETEA Proposed
Title 49 Indian Lands Transit Provisions

- (ii) prevents or mitigates an adverse impact on a natural resource;
- (iii) improves Federal land management agency resource management;
- (iv) improves visitor mobility and accessibility and the visitor experience;
- (v) reduces congestion and pollution (including noise pollution and visual pollution); or
- (vi) conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility).

(6) 'Secretary' means the Secretary of Transportation.

(c) LIMITATION ON USE OF AVAILABLE AMOUNTS.—

(1) The Secretary, in consultation with the Secretary of the Interior, may use not more than 10 percent of the amount made available for a fiscal year under section 5338(a)(2)(G) to carry out planning, research, and technical assistance under this section, including the development of technology appropriate for use in a qualified project.

(2) Amounts made available under this subsection are in addition to amounts otherwise available to the Secretary to carry out planning, research, and technical assistance under this title or any other provision of law.

(3) No qualified project shall receive more than 12 percent of the total amount made available to carry out this section under section 5338(a)(2)(G) for any fiscal year.

(d) PLANNING PROCESS.—In undertaking a qualified project under this section,

(1) if the qualified participant is a Federal land management agency—

(A) the Secretary, in cooperation with the Secretary of the Interior, shall develop transportation planning procedures that are consistent with—

- (i) the metropolitan planning provisions under section 5303 of this title;
- (ii) the statewide planning provisions under section 5304 of this title; and

SAFETEA Proposed
Title 49 Indian Lands Transit Provisions

(iii) the public participation requirements under section 5307(e); and

(B) in the case of a qualified project that is at a unit of the National Park system, the planning process shall be consistent with the general management plans of the unit of the National Park system; and

(2) if the qualified participant is a State or local governmental authority, or more than one State or local governmental authority in more than one State, the qualified participant shall—

(A) comply with the metropolitan planning provisions under section 5303 of this title;

(B) comply with the statewide planning provisions under section 5304 of this title;

(C) comply with the public participation requirements under section 5307(e) of this title; and

(D) consult with the appropriate Federal land management agency during the planning process.

(e) COST SHARING.—

(1) The Secretary, in cooperation with the Secretary of the Interior, shall establish the share of assistance to be provided under this section to a qualified participant.

(2) In establishing the share of assistance to be provided under this section, the Secretary shall consider—

(A) visitation levels and the revenue derived from user fees in the eligible area in which the qualified project is carried out;

(B) the extent to which the qualified participant coordinates with a public transportation authority or private entity engaged in public transportation;

SAFETEA Proposed
Title 49 Indian Lands Transit Provisions

(C) private investment in the qualified project, including the provision of contract services, joint development activities, and the use of innovative financing mechanisms;

(D) the clear and direct benefit to the qualified participant; and

(E) any other matters that the Secretary considers appropriate to carry out this section.

(3) Notwithstanding any other provision of law, Federal funds appropriated to any Federal land management agency may be counted toward the remainder of the cost of a qualified project.

(f) **SELECTION OF QUALIFIED PROJECTS—**

(1) The Secretary of the Interior, after consultation with and in cooperation with the Secretary, shall determine the final selection and funding of an annual program of qualified projects in accordance with this section.

(2) In determining whether to include a project in the annual program of qualified projects, the Secretary of the Interior shall consider—

(A) the justification for the qualified project, including the extent to which the qualified project would conserve resources, prevent or mitigate adverse impact, and enhance the environment;

(B) the location of the qualified project, to ensure that the selected qualified projects—

(i) are geographically diverse nationwide; and

(ii) include qualified projects in eligible areas located in both urban areas and rural areas;

(C) the size of the qualified project, to ensure that there is a balanced distribution;

(D) the historical and cultural significance of a qualified project;

SAFETEA Proposed
Title 49 Indian Lands Transit Provisions

- (E) safety;
- (F) the extent to which the qualified project would—
 - (i) enhance livable communities;
 - (ii) reduce pollution (including noise pollution, air pollution, and visual pollution);
 - (iii) reduce congestion; and
 - (iv) improve the mobility of people in the most efficient manner; and
- (G) any other matters that the Secretary considers appropriate to carry out this section, including—
 - (i) visitation levels;
 - (ii) the use of innovative financing or joint development strategies; and
 - (iii) coordination with gateway communities.

(g) **QUALIFIED PROJECTS CARRIED OUT IN ADVANCE.**—

(1) When a qualified participant carries out any part of a qualified project without assistance under this section in accordance with all applicable procedures and requirements, the Secretary, in consultation with the Secretary of the Interior, may pay the share of the net capital project cost of a qualified project if—

- (A) the qualified participant applies for the payment;
 - (B) the Secretary approves the payment; and
 - (C) before carrying out that part of the qualified project, the Secretary approves the plans and specifications in the same manner as plans and specifications are approved for other projects assisted under this section.
- (2) (A) The cost of carrying out part of a qualified project under paragraph (1) includes the amount of interest earned and payable on bonds issued by a State or local

governmental authority, to the extent that proceeds of the bond are expended in carrying out that part.

SAFETEA Proposed
Title 49 Federal Lands Transit Provisions

(B) The rate of interest under this paragraph may not exceed the most favorable rate reasonably available for the qualified project at the time of borrowing.

(B) The qualified participant shall certify, in a manner satisfactory to the Secretary, that the qualified participant has exercised reasonable diligence in seeking the most favorable interest rate.

(h) RELATIONSHIP TO OTHER LAWS.—

(1) A qualified participant under this section is subject to the requirements of section 5307 of this title to the extent the Secretary considers appropriate.

(2) Section 5333(b) of this title shall apply, provided that the Secretary of Labor shall utilize a Special Warranty that provides a fair and equitable arrangement to protect the interest of employees.

(3) The Secretary may waive the applicability of the Special Warranty under paragraph (B) for private non-profit subrecipients on a case-by-case basis as the Secretary deems appropriate

(4) A qualified participant under this section is subject to any other terms, conditions, requirements, and provisions that the Secretary determines to be appropriate to carry out this section, including requirements for the distribution of proceeds on disposition of real property and equipment resulting from a qualified project assisted under this section.

(5) If the amount of assistance anticipated to be required for a qualified project under this section is \$75,000,000 or more, the qualified participant shall prepare a project management plan in accordance with sections 5327(a) and (b) of this title.”

(i) ASSET MANAGEMENT.—The Secretary, in consultation with the Secretary of the Interior, may transfer the interest of the Department of Transportation in, and control over, all facilities and equipment acquired under this section to a qualified participant for use and

disposition in accordance with any property management regulations that the Secretary determines to be appropriate.

SAFETEA Proposed
Title 49 Federal Lands Transit Provisions

(j) COORDINATION OF RESEARCH AND DEPLOYMENT OF NEW
TECHNOLOGIES.—

(1) The Secretary, in cooperation with the Secretary of the Interior, may undertake, or make grants, cooperative agreements, contracts (including agreements with departments, agencies, and instrumentalities of the Federal Government) or other transactions for research, development, and deployment of new technologies in eligible areas that will—

- (A) conserve resources;
- (B) prevent or mitigate adverse environmental impact;
- (C) improve visitor mobility, accessibility, and enjoyment; and
- (D) reduce pollution (including noise pollution and visual pollution).

(2) The Secretary may request and receive appropriate information from any source.

(3) Grants, cooperative agreements, contracts or other transactions under paragraph (1) shall be awarded from amounts allocated under subsection (c)(1).

NATIONAL SCENIC BYWAYS PROGRAM

Year	2003(TEA -21)	2004	2005	2006	2007	2008	2009
Authorization	\$26.5 M	\$31.5 M	\$31.5 M	\$31.5 M	\$31.5 M	\$31.5 M	\$31.5 M

Program Purpose

The National Scenic Byways Program provides for the designation by the Secretary of roads that have outstanding scenic, historic, cultural, natural, recreational, and archaeological qualities as All-American Roads (AAR), National Scenic Byways (NSB), or the new inclusive term “America’s Byways.” The program also provides funding for scenic byway projects on an AAR, an NSB, one of America’s Byways, or a State-designated scenic byway, and for planning, designing, and developing State scenic byway programs.

SAFETEA Section(s): 1101(a)(12), **1605**

Statutory Citation: 23 USC 162

Funding/Formula

Funds are subject to the overall Federal-aid obligation limitation, and will receive obligational authority equal to the authorization level. [1102(c)]

Grants are awarded by the Secretary to:

- implement eligible projects on designated highways
- plan, design, and develop a State scenic byway program

Program Characteristics

Recognizes the inclusive term “America’s Byways,” that encompasses both National Scenic Byways and All-American Roads.

Note: If State and byway representatives reach consensus on establishing a single designation category, then these amendments would provide the Secretary with the authority to use any of the three terms – National Scenic Byways, All-American Roads, or America’s Byways – as the single designation.

Continues the designations of AARs and NSBs in accordance with criteria developed by the Secretary.

Continues the requirement that a road be designated as a State scenic byway or a Federal land management agency byway before being considered for national designation.

Eligibility

Eligibility is expanded to include research, technical assistance, marketing and promotion projects and activities –

- including the Center for National Scenic Byways in Duluth, Minnesota
- giving priority to partnerships that leverage Federal funds

Passing lanes are removed from eligibility.

Federal Share

Federal share of the cost of projects or activities is 80%, except that –

- Federal Land management agencies may use their authorized funds for non-Federal match on Federal or Indian lands
- research, technical assistance, marketing and promotion projects may be up to 100%

TRIBAL TRANSPORTATION PROVISIONS

Transfer of Highway and Transit Funds [1302]

Allows a State to transfer apportioned Highway Trust Funds to another Federal agency. The project can be administered by the Federal agency under its procedures. This would make it possible for States to transfer funds to the Bureau of Indian Affairs (BIA). The BIA could then administer projects under their procedures including contracting with Indian tribe under the Indian Self-Determination and Education Assistance Act (ISDEAA).

Planning Capacity Building Initiative [1505]

Funds could be used to enhance Indian tribes' ability to conduct joint transportation planning. Allows Secretary to enter into grants with tribal governments and tribal consortiums.

Federal Lands Highways Program [1804]

Changes current language in 23 USC 132 for projects undertaken by a Federal agency pursuant to an agreement between State and Federal agency. It adds a method that allows for transfer directly to the Federal agency. This change is similar to that proposed in Section 1302 above.

Current legislation allows all funds under Title 23 to be used by Indian tribes under the ISDEAA. Proposed language allows only funds under Chapter 2 and 125(e) (Emergency Relief) to be used in accordance with the ISDEAA and the approved Indian Reservation Road Transportation Improvement Program (IRR TIP).

Allows IRR bridge funds to be used for preliminary engineering. Current law only allows the use of funds for construction available after approval of PS&E.

Provides funds for Federal agencies for safety projects; 15 percent of the total funds to be allocated to BIA. The Secretary of Transportation and Secretary of the appropriate Federal agency may enter into contracts or agreements with Indian tribes for safety projects.

Emergency Medical Services (2003)

Provides $\frac{3}{4}$ of one percent to the Secretary of Interior for coordination of the Nationwide Emergency Medical Services Program

Tribal Technical Assistance Centers (5205)

Establishes the Federal share of the cost of the activities to be 100 percent.

Formula Grants for Other Than Urbanized Areas [3010]

Establishes an Indian Reservation Rural Transit Program for States to provide transit funds to tribal governments. Provides for distribution of funding based on a plan developed by the State.

Transportation Planning [6001]

Moves the Metropolitan and Statewide Planning provisions from sections 134 and 135 in Title 23 USC and Chapter 53 of Title 49 into a new chapter 52 of Title 49. Proposed sections 49 USC 5204(e), (f), and (g) include:

- (e) each State shall consider, at a minimum the concerns of Indian tribal governments
- (f) the statewide transportation plan shall be developed in consultation with the tribal governments

(g) State Transportation Improvement Program (STIP) shall be developed in consultation with the tribal governments

FEDERAL-AID HIGHWAYS OBLIGATION LIMITATION

Year	2003	2004	2005	2006	2007	2008	2009
Limitation	\$31,593M	\$29,294M	\$30,265M	\$31,326M	\$32,257M	\$33,104M	\$33,903M

Purpose

SAFETEA requests and Appropriation Acts usually set a limitation on Federal-aid highway and highway safety construction program obligations. The limitation is a ceiling on the amount of contract authority that may be obligated within a specified time period, usually a fiscal year, regardless of the year in which the contract authority was made available. These limits are imposed in order to control the highway program spending in response to economic and budgetary conditions.

SAFETEA Section(s): 1102, 8101

Statutory Citation: 2 USC 901

Distribution

The majority of the limitation is distributed among the States based on each State's relative share of the total of apportioned funds subject to the limitation to all States for the fiscal year.

[1102(c)(3)]

Certain programs—the Emergency Relief Program, a portion of the Minimum Guarantee program (\$639 million per year), demonstration projects authorized prior to TEA-21, and balances from the old Minimum Allocation Program—are exempt from the obligation limitation and, from a Federal budgeting perspective, are mandatory programs. [1102(b)]

Prior to distribution, a portion of the limitation is set aside for FHWA's administrative expenses (not to exceed the separate limitation on administrative expenses), other programs funded from the administrative takedown, the new Infrastructure Performance and Maintenance Program and each program allocated by the Secretary of Transportation, including. [1102(c)(1)]

Also set aside prior to distribution is obligation limitation for the Appalachian Development Highway System and for \$2 billion of the Minimum Guarantee. [1102(c)(2)]

The law provides for redistribution after August 1 of each year of the obligation limitation from each State or program unable to obligate its share of the limitation to States that are able to obligate more than their initial shares of the limitation. [1102(d)]

Continuing Provisions

The obligation limitation is keyed to anticipated receipts to the Highway Account of the Highway Trust Fund and will be adjusted as new receipt projections and actual receipts become available. [1102(g), 8101(c), 2 USC 901]

Limitation set aside for the Appalachian Development Highway System and a portion of the Minimum Guarantee (\$2 billion per year) is available until used. This limitation carries over at the end of each year and is not part of the August redistribution of obligation limitation described above. [1102(f)]

Limitation for research programs is available for 3 years. [1102(e)]

PLANNING CAPACITY BUILDING INITIATIVE

Year	2003(TEA -21)	2004	2005	2006	2007	2008	2009
Authorization	NA	\$20 M	\$20 M	\$20 M	\$20 M	\$20 M	\$20 M

Program Purpose

This is a new initiative designed to provide States with funds to strengthen metropolitan and statewide transportation planning, and to enhance Tribal capacity to conduct joint transportation planning.

SAFETEA Section(s): 1505

Statutory Citation: NA

Funding/Formula

Program will be funded through a \$20 million set-aside from the Surface Transportation Program (STP) in each of fiscal years 2004-2009.

Use of Funds

Funds are subject to the overall Federal-aid obligation limitation.

Activities eligible for funding include research, program development, information collection and dissemination, and technical assistance. To carry out these activities, the Secretary may use the funds independently or make grants to, or enter into contracts, cooperative agreements and other transactions with:

- Federal, State or local agencies
- Federally-recognized Indian tribal governments or tribal consortiums
- Authorities and associations
- Nonprofit or for-profit corporations
- Institutions of higher education

This initiative will be administered by the Federal Highway Administration (FHWA) in cooperation with the Federal Transit Administration (FTA). Priority will be given to planning practices and processes that support:

- Homeland security planning
- Performance based planning
- Safety planning
- Operations planning
- Freight planning
- Environmental analysis and coordination during planning

Federal Share

The Federal share payable will be up to 100%.

RECREATIONAL TRAILS PROGRAM

Year	2003(TEA -21)	2004	2005	2006	2007	2008	2009
Authorization	\$50 M	\$60 M	\$60 M	\$60 M	\$60 M	\$60 M	\$60 M

Program Purpose

The Recreational Trails Program (RTP) provides funds to develop and maintain recreational trails for motorized and nonmotorized recreational trail users.

SAFETEA Section(s): 1101(a)(8), **1606**, 1815

Statutory Citation: 23 USC 104(h), 206

Funding/Formula

Continues current apportionment formula—50% equally among all eligible States and 50% in proportion to the amount of non-highway recreational fuel use—fuel used for off-highway recreation by snowmobiles, all-terrain vehicles, off-highway motorcycles, and off-highway light trucks.

Funds are subject to the overall Federal-aid obligation limitation.

State must spend at least 10 percent of RTP funds for grants, cooperative agreements, or contracts with qualified youth conservation or service corps to perform recreational trails program activities.

Program Changes

State Recreational Trails Committees –

- Strengthened to assure enhanced representation and public participation.
- Expands concept of 30% minimum motorized and nonmotorized funding to the committee membership.
- If a State does not meet the committee requirements within a fiscal year, it is not eligible for an apportionment in the following fiscal year.

Eliminates authority of a State recreational trail advisory committee to waive the requirement that 30 percent of a State's apportionment for a fiscal year be used for uses relating to motorized recreation and another 30 percent be used for uses relating to nonmotorized recreation.

Exempts the RTP from certain requirements more appropriate for large highway projects:

- highway contracting requirements and requirements for Federal-aid highways (23 USC 112, 113, 114)
- maintenance of the Federal-aid highway system by State DOTs (23 USC 116)
- State and Metropolitan Planning requirements (23 USC 134,135)
- Bicycle Transportation and Pedestrian Walkways requirements (23 USC 217)
- Use of Highway Tolls (23 USC 301).

Assumption of Responsibility [1815]

Allows the Secretary to assign to a State some or all of the Department's responsibilities under Federal law, except responsibilities relating to Federally recognized tribes, that are applicable to RTP projects. The State would assume full responsibility for complying with such laws and, consequently, full liability for any failure to comply.

Requires a memorandum of understanding (MOU) between the Secretary and the State, setting forth the terms and conditions of assignment and assumption of responsibility, including State consent to accept the jurisdiction of Federal courts. MOU must be renegotiated every three years. The Secretary must conduct annual compliance reviews for the first three years, and periodically thereafter.

NOTE: States may continue to provide RTP subgrants to tribal governments.

Eligible Use of Funds

Permissible use of RTP funds apportioned to States amended to add --

- assessment of trail conditions for accessibility and maintenance.
- use of trail crews or youth conservation or service corps to perform recreational trails activities

Broadens uses of RTP educational funds (limited to 5% of a State's apportionment) to include --

- supporting non-law enforcement trail safety
- trail use monitoring patrols
- trail related training

Permits RTP funds to be used as non-Federal share on other eligible Federal projects.

Federal Share

Federal share changed from a strict 80 percent to the sliding scale share used in the Federal-aid highway program.

Pre-approval planning and environmental compliance costs can now be credited toward the non-Federal share for RTP projects, limited to costs incurred less than 18 months prior to project approval.

TRANSPORTATION ENHANCEMENTS

Purpose

Transportation enhancements (TE) are transportation-related activities that strengthen the cultural, aesthetic, and environmental aspects of the Nation's transportation system.

SAFETEA Section(s): 1815

Statutory Citation (current law): 23 USC 101(a)(35), 133

Funding/Formula

Retains the 10 % transportation enhancements set-aside of Surface Transportation Program (STP) funds [23 USC 133(d)(2)].

Eligible Activities [23 USC 101(a)(35)]

Continues eligibility for any of the following activities, if such activity relates to surface transportation:

- provision of facilities for pedestrians and bicycles
- provision of safety and educational activities for pedestrians and bicyclists
- acquisition of scenic easements and scenic or historic sites,
- scenic or historic highway programs (including the provision of tourist and welcome center facilities)
- landscaping and other scenic beautification
- historic preservation
- rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals)
- preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails)
- control and removal of outdoor advertising
- archaeological planning and research
- environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity
- establishment of transportation museums.

Assumption of Responsibilities [1815]

Allows the Secretary to assign to a State agency some or all of the Department's responsibilities under Federal law, except responsibilities relating to Federally recognized tribes, for activities that are eligible under Transportation Enhancements (whether funded from the TE setaside or from other Title 23 funds, such as other STP, Minimum Guarantee, or the Congestion Mitigation and Air Quality Improvement Program). The State agency would assume full responsibility for complying with such laws and, consequently, full liability for any failure to comply.

Requires a memorandum of understanding (MOU) between the Secretary and the State, setting forth the terms and conditions of assignment and assumption of responsibility, including State consent to accept the jurisdiction of Federal courts. MOU must be renegotiated every three years. The Secretary must conduct annual compliance reviews for the first three years, and periodically thereafter.

NOTE: States may continue to provide TE subgrants to tribal governments.

